

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 768-768

Press
~~Mis.~~

43.44

Dated

3-7-1918

Not to be folded or roughly handled

[Handwritten signature]
30/10

Fort St. George, Judicial Consultation, 7th July 1857.

No. 43. Read the following letter from F. LUSHINGTON, Esq., Civil Auditor; to E. MALTBY, Esq., Acting Chief Secretary to Government, dated 19th June 1857, No. 244.

SIR,

Fixed Department.

I have the honor to submit for the consideration and orders of the Right Honorable the Governor in Council, copy of a letter* to my address, from Mr. H. D. Cook, Civil and Session Judge of Calicut, appealing from two retrenchments issued by me against him, on the audit of the accounts of the Madura and Malabar districts for Fusly 1265.

From the annexed extract from my audit remarks, it will be observed, that the retrenchments in question were directed against Mr. Cook, on account of the deputation allowance erroneously drawn by him during the periods occupied by him in travelling from Salem to Madura, and subsequently from Madura to Calicut.

The chief ground in which Mr. Cook takes exception to the retrenchment is that, that under "Section XXIII, Chap. V, rules for joining stations," he was clearly entitled to his deputation allowance as the translation was a mere change from one acting appointment to another of equal salary, and that the rule states that the Officer "will draw out of the salary of the office he is about to join, a sum equal to that of his previous situation." But with reference to this objection, I would remark, that it has always been held by this office (and the ruling is supported

Section XXV, Civil Absentee Rules, G. L. 26th April 1841, M. G. 21st May 1841.

by the authority quoted in margin) that deputation allowance is payable only from the date upon which the officer enters on the performance of his acting duties, and that it ceases on his relinquishment of those duties. It seems clear to me therefore, that immediately Mr. Cook delivered over charge of the Salem Court, he must be held to have forfeited all claim to the allowances of that Judgeship: and that his title to deputation allowance as Acting Civil and Session Judge of Madura, can be considered to have commenced only with the date on which he assumed charge of the duties of that office. This remark is equally applicable to the period intervening between Mr. Cook delivering over charge of the Madura Court, and assuming charge of that of Calicut.

Other reasons are adduced by Mr. Cook in support of his objection to the retrenchment, but they would seem to be more of a private than a public nature, and it will be for the Government therefore to determine whether they be of such cogency as to warrant that gentleman's exemption from the operation of the rules, which, as above stated, appears to me to be clearly applicable to his case.

(Signed) F. LUSHINGTON,
Civil Auditor.

From H. D. COOK, Esq., Civil and Sessions Judge of Calicut; to F. LUSHINGTON, Esq., Civil Auditor, Fort Saint George, dated 12th June 1857, No. 325.

SIR,

1. With reference to the "list of objections made in the audit of fixed charges, for Fusly 1265, dated 11th May 1857," for the Madura district, I observe that under the head No. 7, I am deducted Rs. 349 Annas 7 Pice 5, on the ground that "deputation allowance is only payable to Officers from the date of their joining their respective appointments, &c."

2. The amount retrenched, I shall of course immediately pay into the Collector's treasury, but the circumstances under which I was translated from Salem to Madura are so peculiar, that I beg you will do me the favor to submit the following remarks for the information of Government, in

Fort St. George, Judicial Consultation, 7th July 1857.

the hope that this sum may not be deducted from me, and in the event of the Government of Madras being unable to comply with my request, I respectfully solicit that the matter be referred for the consideration of the Government of India.

3. In the first place, I consider that under Section XXIII, Chap. V, rules for joining stations, I was clearly entitled to my deputation allowance, as the translation was a mere change from one acting appointment to another of equal salary, and the rule states that the officer "will draw out of the salary of the office he is about to join, a sum equal to that of his previous situation."

4. To assert that this rule does not apply to an officer "acting," is, I conceive, a mere arbitrary interpretation, and it could not have been the intention of Government to mulct an officer, when the Government moved him from one office to another. On a fair and liberal consideration of the rule in question, I respectfully submit, that I was entitled to my deputation allowance, both when changed from Salem to Madura, and from the latter place to Calicut.

5. The change from Salem to Madura was made without any reference to me, and no peculiar exigency of the service rendered it expedient. In fact, I was moved to make way for another gentleman, whose arrival from the Cape was expected, as the gentleman who succeeded me was told at the time of his nomination. It appears to me therefore hard, and I should think contrary to a fair interpretation of the rules, that I should be mulcted in my deputation allowance when I was merely changed from one Acting Judgeship to another, without *reverting to my own fixed appointment*. Had this taken place, then of course I had not the least claim to deputation, and it is upon this fact, viz., that the change was from one Acting Judgeship to another, that I base my claim.

6. The latter change (from Madura to Calicut) was not solicited by me, but the Government asked me if I felt inclined to take the Calicut Acting Judgeship, and I assented, but I was under the impression that I would get my deputation allowance, and it was under that impression, that I remained at Madura 10 days longer than I would have done, to conduct the examination of Moonsiffs!

7. When I was removed from Salem, I wrote to the Right Honorable the Governor, respectfully representing that under the peculiar circumstances of my family, I might be allowed to remain in statu quo, my request was not granted, and although all my family were suffering from fever, more or less, I nevertheless started, and on the road I was obliged to leave one member of it at Trichinopoly, when she was nearly at the point of death, and was unable to join the family at Madura, till weeks after. This state of my family delayed me at Salem, and I did not take charge till the 26th October, but I was within the time allowed me for joining.

8. Such is a plain statement of the circumstances under which I was moved from Salem to Madura, and from the latter place to Calicut, and I hold that under a just and liberal consideration of the rule I have alluded to, I was clearly entitled to my deputation allowance. I was acting under the order of Government, and did not waste a day in my own affairs, but moved under sickness and difficulty.

9. I respectfully solicit therefore the kind consideration of Government, and trust that these sums retrenched, may be ordered to me.

(Signed) H. D. COOK,
Civil and Session Judge.

(True Copy.)

(Signed) F. LUSHINGTON,
Civil Auditor.

Fort St. George, Judicial Consultation, 7th July 1857.

Extract from the list of objections made on the audit of the fixed charges of Madura and Malabar Collectorates, for Fusly 1265.

No.	Charges objected to.	Remarks of the Civil Auditor.
	MADURA.	
7.	Amount of deputation allowance drawn by Mr. H. D. Cook, as Acting Civil and Session Judge of Madura, from 1st October 1855, to 21st February 1856, at Rupees 433-5-4, per month.... 2047-2-0 Admitted his do. as do. of do. from 26th October 1855, to 21st February 1856, at do. per do. 1697-10-7	No. 7. Deputation allowance is only payable to Officers from the date of their joining their respective appointments, but it appears from the Official Gazette of 30th October 1855, page 1289, that Mr. Cook, assumed charge of the Court on the 26th Idem, consequently he was not entitled to draw the allowance from the 1st of that month. The Collector is therefore requested to recover this difference from that gentleman, and credit it in his accounts to the proper head.
	Difference..... 347 7 5	
	MALABAR.	
5.	Amount of deputation allowance drawn by Mr. H. D. Cook, as Acting Civil and Session Judge of Calicut, for March and April 1856, at Rupees 433-5-4, per month... 866-10-8 Admitted his do. as do. of do. from 10th March to 30th April 1856, at do. per do... 740-13-9	No. 5. Deputation allowance not being payable for any period prior to joining an appointment, and it appearing that Mr. Cook, assumed charge of his appointment as Acting Civil and Session Judge of Calicut on the 10th March 1856, he has incorrectly drawn the allowance from 1st to 9th Idem. The Collector is therefore requested to recover this difference from Mr. Cook, and credit it in his accounts to the proper head.
	Difference..... 125 12 11	

(True Extract.)

(Signed) F. LUSHINGTON,
Civil Auditor.

No. 44. ORDER THEREON, No. 765; dated 3rd July 1857.

1. With the above letter, the Civil Auditor submits an appeal, by Mr. H. D. Cook, Civil and Session Judge of Calicut, from retrenchments made by him on account of the Deputation allowance drawn by that Officer while travelling to join his acting appointments at Madura, and subsequently at Calicut. Mr. Lushington remarks "that it has always been held by his office on the authority quoted in the margin, that Deputation allowance is payable only from the date upon which the Officer enters on the performance of his acting duties and that it ceases on his relinquishment of those duties."

2. The foregoing rule, Mr. Cook has argued, can apply only to Officers moved from a post of less emolument to one of a higher. The changes in this case were of location only; he was transferred from one acting appointment to another acting appointment of equal salary. Consequently, he holds, under Section XXXIII, Chapter V "Rules for joining stations" he was fully entitled to "draw out of the salary of the office he was about to join a sum equal to that of his previous situation."

3. The Right Honorable the Governor in Council is of opinion that there is much force in Mr. Cook's argument, and he resolves to apply to the Government of India for an authoritative exposition of the rules on the point under discussion.

(Signed) E. MALTBY,
Acting Chief Secretary.

Fort St. George, Judicial Consultation, 7th July 1857.

Ordered that the following letter be despatched.

No. 45. From E. MALTBY, Esq., Acting Chief Secretary to the Government of Fort St. George, to the Secretary to the Government of India; dated 3rd July 1857, No. 766.

SIR,

I am directed to ask the decision of the Government of India in the following case, involving the proper interpretation to be put on the "Deputation" Clauses in the Civil Absentee Rules.

2. On the 1st October 1855, Mr. Cook, Subordinate Judge of Calicut and Acting Civil Judge of Salem was appointed (he being then Acting at Salem) to act as Civil Judge of Madura. He accordingly joined his new post at Madura, and after acting in it for a few months, was ordered to act as Civil Judge of Calicut. Deputation allowance was drawn by him, both while joining Madura from Salem, and Calicut from Madura. These sums the Civil Auditor has retrenched on the ground that under Section XXV of the Rules, Deputation allowance is payable only from the date upon which an Officer enters on the performance of his acting duties and that it ceases on his relinquishment of those duties.

3. On the other hand, Mr. Cook has argued that, that rule can apply only to Officers moved from a post of less emolument to one of a higher; that the changes in his case were of location only, he being translated from one acting appointment to another acting appointment of equal salary, and that under Section XXXIII, Chap. V, he was fully entitled to "draw out of" the salary of the office he was about to join a sum equal to that of his previous situation."

4. It appears to the Governor in Council that Mr. Cook's claim is well founded. When a servant holds a confirmed appointment and his services are required by Government in a similar office in another place, he does not lose his salary during the time which is occupied in joining his new station. This principle ought to apply equally to acting appointments, as Government is occasionally obliged to make such changes, as in Mr. Cook's case, to provide for the due performance of public business, and it would be unjust that an Officer thus deputed on public duty to a new station should lose his allowances, while incurring the expense of the move.

(Signed) E. MALTBY,
Acting Chief Secretary..

Judicial Department

N^o 765

Extract from the Minutes of Consultation
Dated 3rd July 1857.

Read the following
letter from the Civil
Auditor

(Here enter 19th June 1857.
N^o 244)

With the above
letter the Civil Auditor
submits an appeal, by
Mr. F. D. Cook Civil
and Session Judge of Calicut,
from retrenchments made
by him on account of the
Deputation allowance
drawn by that Officer
while travelling to join
his Acting appointments
at Madura and subsequently
at

Sec: XXV. Civil Absence
Rules - 26 April 1841.

at Calicut. Mr. Lushington
remarks "that it has always
been held by his Office on
the authority quoted in the
margin that deputation
allowance is payable only
from the date upon which
the Officer enters on the
performance of his Acting
duties and that it ceases
on his relinquishment
of those duties."

2 The foregoing
rule, Mr. Cook has ar-
gued, can apply only to
Officers moved from a
post of less emolument to
one of a higher. The
changes in this case were
of location only; he was
transferred from one acting
appointment to another
acting appointment of
equal salary. Consequently,
he holds, under section XXXIII
Chapter V "Rules for
joining stations,"
he

4-
he was fully entitled to
"draw out of the salary
"of the Office he was about
"to join a sum equal to
"that of his previous situation"
3.5 The Right Honble the Governor in
Council is of opinion that
there is much force in Mr
Cook's argument, and he
resolves to apply to the
Government of India for
an authoritative reposition
on the point under discussion
of the Rules & Resolved
accordingly that the
accompanying letter
to the Secretary to
the Govt of India be
despatched

J M

Recd A. H. Rescoe

Judicial Department

No. 766

The Secretary to the Government
of India

Sir,

I am directed to
ask the decision of the
Govt. of India in the follow-
ing case, involving the pro-
per interpretation to be
put on the "Deputation"
clauses in the Civil
Absentee Rules.

2 On the 1st Octr/55,
Mr. Cook, Subordinate Judge
of Calicut and Acting
Civil Judge of Salem was
appointed (he being then
Acting at Salem) to act as
Civil Judge of Madras.
He accordingly joined his
New Post at Madras, and
after

In by Henry & Gully
Judicial 1857 28th Oct

No. 765

Exchequer Ministry of Bom

27 3 28 July 1857

43 @ 45

after acting in it for a few months, was ordered to act as civil judge of Calicut Deputation allowance was drawn by him, both while joining Madras from Salem, and Calicut from Madras. These sums the civil Auditor has retrenched on the ground that under section XXV of the Rules, deputation allowance is payable only from the date upon which an officer enters on the performance of his acting duties and that it ceases on his relinquishment of those duties.

3 On the other hand, Mr. Cook has argued that, that rule can apply only to officers moved from a post of less emolument to one of a higher; that the changes in his case were of location only, he being translated

translated from one acting appointment to another acting appointment of equal salary, and that under sec: XXXIII Chap: V, he was fully entitled to "draw out of the salary of the office he was about to join a sum equal to that of his previous situation."

4 It appears to the Governor in Council that Mr. Cook's claim is well founded. When a servant holds a confirmed appointment and his services are required by Govt: in a similar office in another place he does not lose his salary during the time which is occupied in joining his new station. This principle ought to apply equally to acting appointments, as Govt: is occasionally obliged to make

7-
make such changes as in
Mr. Cook's case to provide
for the due performance
of public business, and it
would be unjust that
an officer thus deputed
on public duty to a new
station should lose his
allowances, while incurring
the expense of the
move.

Yr

12. Capt. Fort St. George
3rd July 1867.

Secy. A. M. K. R. R.
522 June
22 July

In 84. born: 7 July
Audicial 1837 28 Jan 1838

1837

1837
The day to the 1st of
And in

1837 July 1837

1838-1837